



# PUBLIC NOTICE

**Federal Communications Commission  
445 12<sup>th</sup> Street S.W.  
Washington, D.C. 20554**

News media information 202 / 418-5000  
Fax-On-Demand 202 / 418-2830  
Internet: <http://www.fcc.gov>  
<ftp.fcc.gov>

DA- 06-2264

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**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

## **PUBLIC NOTICE**

**Released: November 2, 2006**

### **FEE DECISIONS OF THE MANAGING DIRECTOR AVAILABLE TO THE PUBLIC**

The Managing Director is responsible for fee decisions in response to requests for waiver or deferral of fees as well as other pleadings associated with the fee collection process. A public notice of these fee decisions is published in the FCC record.

The decisions are placed in General Docket 86-285 and are available for public inspection. A copy of the decision is also placed in the appropriate docket, if one exists.

The following Managing Director fee decisions are released for public information:

**Friendship Broadcasting, L.P. KCFO (AM)** – Request for waiver of FY 2005 regulatory fee late payment penalty. **Denied** (August 24, 2006) [See 47 U.S.C. §159(c)]

**Radio Lake Placid** - Request for refund of application fee. **Denied** (October 17, 2006) [See 2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, MM Docket 02-277, Report and Order, 18 FCC Rcd 13,620 (2003)]

**USA Digital Radio Inc. -WD2XAB** Request for waiver of FY 2004 regulatory fee. **Granted** (August 21, 2006) [See Assessment and Collection of Regulatory Fees for Fiscal Year 2006, Report and Order, MD Docket No. 06-08, FCC 06-102, ¶23, released July 17, 2006]

**NOTE: ANY QUESTIONS REGARDING THIS REPORT SHOULD BE DIRECTED TO THE REVENUE AND RECEIVABLES OPERATIONS GROUP AT (202) 418-1995.**

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

OCT 17 2008

OFFICE OF  
MANAGING DIRECTOR

Peter Tannenwald, Esq.  
Irwin, Cambell & Tannenwald, P.C.  
1730 Rhode Island Avenue, NW  
Suite 200  
Washington, DC 20036-3101

Re: Request for Waiver of Application Fees  
From Radio Lake Placid  
Fee Control No. 0305308350892016

Dear Mr. Tannenwald:

On January, 2, 2004, Edward S. Morgan "petitioner," through counsel, filed a request for a refund of a filing fee paid in connection with an application for consent to transfer control of three radio stations. That request is hereby denied.

Petitioner states in its refund request that it filed an application to transfer control of Radio Lake Placid, Inc. of three stations from Kathryn Nardiello to petitioner and paid a filing fee of \$2,400.00, \$800.00 for each station. Petitioner further states that on July 2, 2003, the Commission released its Report and Order in MM Docket No. 02-277, amending the applicable multiple ownership rules.<sup>1</sup> Petitioner states that the application complied with the new rules. On September 3, 2003, those rules were stayed, however, by the United States Court of Appeals for the Third Circuit, which ordered the Commission to process applications under the old rules. Petitioner states that in order to comply with the old rules he had to delete one of the stations from the application, which was done on November 1, 2003. Petitioner asserts that "there was ample time for the Commission to have completed processing and to have granted the application while the new multiple ownership rules were in effect." Petitioner argues that the deletion of the third station was caused by a regulatory development outside of Mr. Morgan's control and that it would not have had to be deleted absent the judicial stay.

There is no basis to grant petitioner's request. The original application to transfer control of the three radio stations was filed on May 30, 2003, before the Commission released the order amending its multiple ownership rules. Further, the July 2, 2003 order amending the rules stated that the effective date would be 30 days from publication in the Federal Register.<sup>2</sup> The order was published in the Federal Register on August 5, 2003.<sup>3</sup> Thus, the rules would have only become effective on September 4, 2003, if the court's stay had not been issued the day before.

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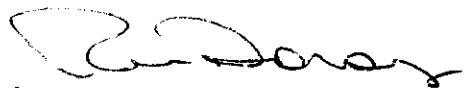
<sup>1</sup> See 2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, MM Docket 02-277, Report and Order, 18 FCC Rcd 13620 (2003).

<sup>2</sup> *Id.*

<sup>3</sup> 68 Fed. Reg. 46285 (August 5, 2003).

The application did not comply with our multiple ownership rules at the time it was filed. Further, the amended rules never took effect while the application was pending. Petitioner's claim that the Commission could have completed processing while the new multiple ownership rules were in effect is baseless. The new multiple ownership rules were never in effect. Petitioner's application violated the Commission's rules at the time it was filed and for the entire time it was pending. Petitioner's request for refund is therefore denied.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark A. Stephens", with a stylized flourish at the end.

Mark A. Stephens  
Chief Financial Officer

0305308350898016

  
**IRWIN, CAMPBELL & TANNENWALD, P.C.**

ATTORNEYS AT LAW  
1730 RHODE ISLAND AVENUE, N.W.  
SUITE 200  
WASHINGTON, D.C. 20036-3101  
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FAX (202) 728-0354  
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7585

PETER TANNENWALD  
(202) 728-0401 Ext. 105  
[ptannenwald@ictpc.com](mailto:ptannenwald@ictpc.com)

January 2, 2004

RECEIVED -00

JAN - 2 2004

Andrew S. Fishel, Managing Director  
Federal Communications Commission  
Washington, DC 20554

Federal Communication Commission  
Bureau / Office

**Re: Request for Filing Fee Refund**

Dear Mr. Fishel:

On behalf of Edward S. Morgan, this is to request a refund of \$800, which is one-third of the \$2,400 filing fee paid in connection with a broadcast multi-station application for consent to a transfer of control of Radio Lake Placid, Inc. from Kathryn O'K. Nardiello to Edward S. Morgan. Three stations were included on one Form 315:

WLPW(FM), Facility ID 54653, BTC-20030530BOI  
WIRD(AM), Facility ID 54652, BTCH-20030530BOJ  
WRGR(FM), Facility ID 56078, BTCH-20030530BOK

A fee of \$2,400 was paid -- \$800 for each station. Documentation of the fee payment is attached.

On July 2, 2003, the Commission released its Report and Order in MM Docket No. 02-277, amending its multiple ownership rules. The application complied with the new rules. However, on September 3, 2003, the U.S. Court of Appeals for the Third Circuit issued a stay, directing the Commission to process applications under the old multiple ownership rules. In order to comply with the old rules, Mr. Morgan had to delete WIRD from the application, which he did by amendment dated November 1, 2003.

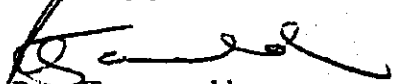
Andrew S. Fishel, Managing Director  
January 2, 2004  
Page 2

There was ample time for the Commission to have completed processing and to have granted the application while the new multiple ownership rules were in effect. Because there was no grant during that period, Mr. Morgan was forced to reduce the number of stations he would control, resulting in the deletion of WIRD.

As the deletion of WIRD was caused by a regulatory development outside of Mr. Morgan's control, and WIRD would not have had to be deleted absence the judicial stay, Mr. Morgan requests that the portion of the filing fee attributable to WIRD be refunded.

Mr. Morgan's address is on the Form 159 attached hereto.

Very truly yours,



Peter Tannenwald  
Counsel for Edward S. Morgan

cc: Mr. Edward S. Morgan

FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

OFFICE OF  
MANAGING DIRECTOR

August 24, 2006

Ms. Linda S. Grohe  
Friendship Broadcasting, L.P.  
5800 E. Skelly Drive  
Suite 150  
Tulsa, OK 74135

Re: Request to Waive Late Payment Penalty  
For FY 2005 Regulatory Fee for KCFO-AM  
Fee Control No. 0508258838191003  
Bill No. 06RE000721

Dear Ms. Grohe:

This is in response to your request for waiver of a late payment penalty associated with the fiscal year (FY) 2005 regulatory fee for radio station KCFO-AM (KCFO).<sup>1</sup> Our records reflect that on August 25, 2005, we received payment of \$2925.00 for KCFO's FY 2005 regulatory fee, and on March 23, 2006, we received an additional payment of \$50.00. We have not received the late payment penalty of \$12.50 in connection with the \$50.00 underpayment. As explained below, your request for waiver of the 25 per cent penalty is denied.

In response to a January 31, 2006 notice from the Commission stating it had not received your FY 2005 regulatory fee, you state that you researched your records and found that you had made a payment by check on August 9, 2005.<sup>2</sup> You enclose a copy of your cancelled check #6212, showing a payment of \$2925.00, date stamped by Mellon Bank on August 26, 2005.<sup>3</sup> You state that in researching this matter, you found that your payment should have been in the amount of \$2975.00, and you enclose a check for the \$50.00 balance.<sup>4</sup> You request a waiver of the 25 per cent penalty assessed against your account in the amount of \$743.75.<sup>5</sup> You assert that your FY 2005 regulatory fee payment was short by \$50.00 due to a bookkeeping error and that when you became aware of that, you promptly sent the additional \$50.00. You question how you can be assessed a penalty for the full amount of the regulatory fee when you had paid 98 per cent of the fee

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<sup>1</sup> Letters from Linda S. Grohe, Friendship Broadcasting, L.P., dated March 1 and March 21, 2006 (March 1 Request and March 21 Request, respectively).

<sup>2</sup> March 1 Request at 1.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> March 21 Request at 1. The outstanding amount of \$743.75 was listed in error. Bill No. 06RE000721 should have listed the underpayment of \$50.00 and the penalty of \$12.50, a total outstanding amount of \$62.50.

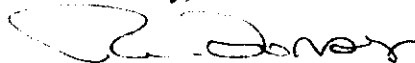
prior to the September 7, 2005 due date.<sup>6</sup> You ask us to review your account for your past payment history.<sup>7</sup>

The Commission's rules are clear that licensees such as KCFO are required to pay to the Commission an annual regulatory fee in a timely manner.<sup>8</sup> It is the obligation of the licensees responsible for regulatory fee payments to ensure that the Commission receives the full fee payment no later than the final date on which regulatory fees are due for the year.<sup>9</sup> Your request does not indicate or substantiate compliance with this obligation. KCFO was responsible for payment of its full 2005 regulatory fee of \$2,975 on September 7, 2005, the FY 2005 due date. Further, your assertion that the \$50.00 underpayment resulted from a bookkeeping error does not excuse the late payment of a portion of KCFO's FY 2005 regulatory fee. The Commission has repeatedly held that "[l]icensees are expected to know and comply with the Commission's rules and regulations and will not be excused for violations thereof, absent clear mitigating circumstances." *Sitka Broadcasting Co., Inc.*, 70 FCC 2d 2375, 2378 (1979), *citing Lowndes County Broadcasting Co.*, 23 FCC 2d 91 (1970) and *Emporium Broadcasting Co.*, 23 FCC 2d 868 (1970). Finally, the Communications Act of 1934, as amended, requires the Commission to assess a late payment penalty of 25 percent on any regulatory fee not paid in a timely manner.<sup>10</sup> The late payment penalty of \$12.50 is 25 percent of the late payment (\$50.50); it is not assessed against the full amount of the annual regulatory fee.

For the reasons discussed above, we deny your request to waive the penalty for late payment.

Payment of the \$12.50 penalty is now due. It should be submitted within 30 days of the date of this letter. If you have any questions concerning this matter please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,



Mark Stephens  
Acting Chief Financial Officer

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 2005*, Report and Order, 20 FCC Rcd 12,259 ¶¶ 45-49 (2005); 47 U.S.C. §159; 47 C.F.R. §1.1157.

<sup>9</sup> *Id.*

<sup>10</sup> 47 U.S.C. §159(c).

**FRIENDSHIP BROADCASTING, L.P.  
5800 E. SKELLY DRIVE, SUITE 150  
TULSA, OK 74135**

**COPY**

**MEMORANDUM**

727  
0508258838/9/003

**DATE:** March 1, 2006

**TO:** Federal Communications Commission  
Revenue & Receivables Operations Group  
Room 1A821  
445 12<sup>th</sup> Street  
S.W. Washington, DC 20554

**FROM:** Linda S. Grohe

**RE:** Friendship Broadcastin, L.P.  
5800 E. Skelly Drive, Suite 150  
Tulsa, OK 74135

This is in response to your notice dated January 31, 2006 stating that our regulatory fee for FY 2005 has not been received by your office.

We have researched our records and found that we made this payment on August 9, 2005. Enclosed is a copy of our cancelled check #6212 in the amount of \$2,925.00, our check cleared our bank account on August 26, 2005.

In researching this matter we found that our payment should have been in the amount of \$2,975.00, therefore we enclose our check #11472 in the amount of \$50.00. Upon review and processing of this matter we request the abatement of the 25% penalty in the amount of \$743.75.

Your response should be mailed to:

**Friendship Broadcasting, L.P.  
5800 E. Skelly Drive, Suite 150  
Tulsa, OK 74135.**

**FRIENDSHIP BROADCASTING, L.P.  
5800 E. SKELLY DRIVE, SUITE 150  
TULSA, OK 74135**

7277

**MEMORANDUM**

**DATE: March 21, 2006**

**TO: Federal Communications Commission  
Revenue & Receivables Operations Group  
Room 1A821  
445 12<sup>th</sup> Street  
S.W. Washington, DC 20554**

**FROM: Linda S. Grohe**

**RE: Friendship Broadcasting, L.P.  
5800 E. Skelly Drive, Suite 150  
Tulsa, OK 74135**

**We are writing to request waiver of the 25% penalty assessed against our account in the amount of \$743.75. We previously sent correspondence regarding this matter on March 1, 2006 (copy attached).**

**Due to a bookkeeping error our payment for the FY2005 regulatory fee was short by \$50.00. When we became aware of this oversight we promptly sent in the \$50.00. We do not understand how we can be assessed a penalty for the full amount of the regulatory fee, when 98% of the fee was paid prior to the due date of September 7, 2005.**

**Please review our account for our past payment history. You may contact me directly at (302)734-5826.**

**Your response should be mailed to:**

**Friendship Broadcasting, L.P.  
5800 E. Skelly Drive, Suite 150  
Tulsa, OK 74135.**

**APR 03 REC'D**

Adama

FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554  
AUG 21 2006

OFFICE OF  
MANAGING DIRECTOR

Albert Shuldiner  
Vice President & Legal Counsel  
Ibiquity Digital  
8865 Stanford Boulevard  
Suite 202  
Columbia, MD 21045

Re: 2004 Regulatory Fees for USA Digital  
Radio, Inc.  
Fee Control No. 00000RROG-05-056

Dear Mr. Shuldiner:

This is in response to your request filed May 31, 2005 on behalf of USA Digital Radio, Inc. (USA Digital), Call Sign WD2XAB, for an exemption or waiver of its FY 2004 regulatory fee, or alternatively, waiver of the late payment penalty, on the grounds that USA Digital is used intermittently on an experimental, non-commercial basis.<sup>1</sup> As explained below, we have granted your request.

In your request, you enclosed a copy of a letter dated July 23, 2004 that you previously sent to the Commission. In that letter you requested exemption from the 2004 regulatory fee requirement, noting that the station in question is an experimental station used for testing new technology for development of the In-Band On-Channel system for FM radio broadcasting and that the station is not used for commercial service or to provide any services to the public.<sup>2</sup>

A review of our records confirms that USA Digital, Call Sign WD2XAB, is an experimental station. The Commission recently clarified that holders of experimental licenses are not required to pay regulatory fees for such licenses. *See Assessment and Collection of Regulatory Fees for Fiscal Year 2006*, Report and Order, MD Docket No. 06-08, FCC 06-102, ¶23, released July 17, 2006.<sup>3</sup> Therefore, no fee is due.

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<sup>1</sup> Letter from Albert Shuldiner dated May 31, 2005.

<sup>2</sup> Letter from Albert Shuldiner dated July 23, 2004.

<sup>3</sup> *See also* Letter from Mark A. Reger, Chief Financial Officer, to Lawrence N. Cohn, Esq. (Aug. 7, 2002) (licensee not subject to regulatory fee for experimental synchronous AM Station).

Albert Shuldiner  
Vice President & Legal Counsel

2.

If you have any questions concerning this matter please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Stephens", written in a cursive style.

 Mark Stephens  
Acting Chief Financial Officer



00000 RROG-05-056  
WTS No. 3617

RECEIVED FCC

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Albert Shuldiner

Senior VP & General Counsel

2005 JUN -6 P 2:30

May 31, 2005

FINANCIAL OPERATIONS  
CENTER

Federal Communications Commission  
Revenue and Receivables Operations Group  
Room 1A821  
445 12th Street, SW  
Washington, DC 20554

Re: Facility ID: 93478  
Call Sign: WD2XAB  
Re: 05RE004259  
FRN: 0013445408

Dear Sir or Madam:

We are in receipt of a letter dated May 20, 2005 addressed to USA Digital Radio, Inc. concerning non-payment of certain 2004 regulatory fees. On July 23, 2004, I sent the commission a letter stating that this station is used intermittently on an experimental, non-commercial basis and requested exemption from the 2004 regulatory fee requirement. A copy of that letter is enclosed for your reference. No response to that letter was received from the Commission.

By this letter, we renew the request for waiver of any 2004 regulatory fee payment for this station. In the alternative, in the event the commission requires payment of a 2004 regulatory fee, we request waiver of any penalty. The enclosed letter demonstrates our good faith effort to resolve this issue in a timely fashion. Continued operation of this station was based on the assumption the commission had consented to the requested exemption.

If you require additional information, please do not hesitate to contact the undersigned.

Sincerely,

A handwritten signature in dark ink, appearing to read "Albert Shuldiner", written over a horizontal line.

Albert Shuldiner  
Vice President and Legal Counsel